

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

TracFone Wireless, Inc.  
Petition for Declaratory Ruling

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WC Docket No. 11-42

**INITIAL COMMENTS OF NALA/PCA ON TRACFONE'S  
EMERGENCY PETITION FOR DECLARATORY RULING**

The National ALEC Association/Prepaid Communications Association (hereafter "NALA") is a Lifeline advocacy group whose mission is to support the providers of essential communication services through education, cooperation, and advocacy. NALA is the only industry trade group specifically focused on the Lifeline segment of telecommunications. Its members include ETCs, distributors, suppliers, interested individuals, and the recipients of Lifeline services. Working with all segments of the industry, NALA envisions that every person in America will have access to essential communication services.

NALA provides the following comments in support of TracFone Wireless, Inc.'s ("TracFone") Emergency Petition for Declaratory Ruling and reserves the opportunity to provide reply comments on issues it does not address in these initial comments. NALA urges the Federal Communications Commission (Commission) to grant TracFone's Petition and to make all relief available to all Eligible Telecommunications Carriers.

Under 47 CFR §1.2, the Commission is authorized to issue a declaratory ruling to terminate a controversy or remove an uncertainty. The controversy at issue here affects low-income Lifeline subscribers who receive "no-charge" wireless services. That is, the service these customers receive is paid for entirely by the federal universal service Lifeline benefit; customers do not pay except to add minutes or other features to the service. This no-charge service is vital

to persons who have limited cash on hand but who also require access to telephone service, which is “crucial to full participation in our society and economy.”<sup>1</sup> At least two states, Alabama and Indiana, have asserted rights to collect 911 taxes or fees from these no-charge Lifeline subscribers. The idea that states can impose such taxes and fees in this situation is impractical, anticompetitive, and contrary to Commission policy. As such, the Commission should remove the uncertainty of the validity of such 911 fees by issuing a declaratory ruling that prohibits states from taxing or imposing 911 fees on no-charge Lifeline services.

### **1. Collection of proposed fees is impractical.**

With postpaid service providers, collection of 911 taxes or fees can be readily incorporated into the monthly billing and payment process. Where service is prepaid, there is not always a monthly bill sent to customers. In many states, legislation has been enacted that charges prepaid customers 911 taxes or fees at the point of sale, on initial purchase and when topping up minutes on their handsets. At least two states, and possibly others to follow, are going beyond these assessments on point of sale purchases and are now seeking to collect 911 taxes or fees from no-charge Lifeline service customers, where there is neither a monthly bill nor a point of sale transaction. Logistically, this poses a significant obstacle with respect to the very practical matter of invoicing and collecting the fees.

Applying state 911 tax or fee requirements to carriers who do not charge customers for Lifeline-supported service creates a requirement that is impractical, if not impossible, to carry out. It is understandable that states would want to impose taxes and fees fairly and uniformly. However, it is also important to impose these charges on consumers effectively. Imposing a fee, tax, or surcharge on consumers who are difficult to reach and unlikely to pay the amounts owed

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<sup>1</sup> *MTS and WAT Market Structure*, CC Docket 78-72; *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No 80-286, 50 FR 939 at 941, para 9 (1985).

without repeated attempts at collection is simply impractical. It requires expenditure of funds on a fool's errand, and it will not ultimately benefit states' 911 programs. In the meantime, it will waste resources of the carriers that are integral to providing universal service to each state's low-income residents.

**2. Allowing states to impose taxes that disproportionately burden certain carriers is anticompetitive.**

In enacting and implementing the Telecommunications Act of 1996, the Federal Communication Commission's (FCC or Commission) primary aim was to foster "competition in all communications markets."<sup>2</sup> As then Commission Chairman Reed E. Hunt stated, "Implementation of the Act in a procompetitive and timely fashion is the FCC's principal task."<sup>3</sup> As TracFone explained in detail, business models for no-charge Lifeline providers differ from those of pre-paid or post-paid providers. Specifically, no-charge providers do not have an established billing and payment relationship with their customers, because services are provided at no cost to the customer. This situation is perhaps the purest form of universal service, as it allows the provider to minimize administrative costs, which facilitates the ability to provide service at no cost to the Lifeline subscribers. Requiring these providers to establish a billing relationship to collect state taxes or fees increases administrative costs without adding value to the service. No-charge providers cannot simply absorb these costs without affecting their entire business plan and ultimately limiting the kinds and amounts of service they can provide. Such a requirement would place these providers at a disadvantage in the marketplace.

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<sup>2</sup> Statement of Reed E. Hundt, Chairman, Federal Communications Commission, on Implementation of the Telecommunications Act of 1996 presented to the Subcommittee on Telecommunications and Finance, Committee on Commerce of the U.S. House of Representatives on July 18, 1996, available at <http://transition.fcc.gov/Reports/reh71896.html> (last visited Nov. 19, 2014).

<sup>3</sup> *Id.*



**3. Allowing state taxation of the federal Lifeline benefit is contrary to federal policy.**

One solution to the impracticality problem of collecting state fees and taxes from customers directly is for each carrier to pay a state-imposed tax or fee out of the USF's \$9.25 benefit amount rather than pay the administrative fees required to collect from consumers. This method is contrary to public policy. The Telecommunications Act requires that the carrier pass through the entire benefit to the customer.<sup>4</sup> Withholding certain amounts to pay state 911 funds would violate this requirement. An alternative solution is for the carrier to pay the tax or fee itself, which may ultimately cost less than collection efforts. In order for the carrier to simply absorb the costs, it would have to make up those costs in another way, which would ultimately reduce the value of the service provided to the consumer. This is also in violation of federal policy requiring the benefit not to be unnecessarily reduced.<sup>5</sup>

The analogy of sales tax on food stamp purchases is instructive here. The Supplemental Nutritional Assistance Program (SNAP, formerly the food stamp program) is a federal benefit for low-income Americans that provides assistance with basic nutritional needs,<sup>6</sup> just as the Lifeline Program is a federal program for low-income Americans that provides assistance with basic communications needs.<sup>7</sup> Under federal law, states are prohibited from charging sales tax on purchases made with SNAP funds.<sup>8</sup> Sales tax would lower the value of the SNAP funds and re-

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<sup>4</sup> See 47 C.F.R. § 54.403.

<sup>5</sup> 47 U.S.C. § 254(b)(3).

<sup>6</sup> Pub. L. 99-198, 99th Congress, Dec. 23, 1985, enacting the Food Security Act of agricultural commodities 1985, which states the Act's purpose, in pertinent part, is "to continue food assistance to low-income persons, to ensure consumers an abundance of food and fiber at reasonable prices, and for other purposes."

<sup>7</sup> 47 U.S.C. § 151 (Communications Act of 1934, creating the Federal Communications Commission, with Congress' stated intention: "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.").

<sup>8</sup> 7 USC §2013(a); 7 CFR § 272.1(b) ("No sales taxes on food stamp purchases. (1) A State shall not participate in the Food Stamp Program if State or local sales taxes or other taxes or fees, including but not limited to excise taxes,

route it for purposes other than those initially intended. In the same way, state taxation of Lifeline reimbursement funds would lower the value of the federal benefit and re-route the funds to state coffers rather than to serving the communication needs of America's low-income population.

#### **4. Consumer Protection**

Ultimately, the true victims of states' attempts to collect taxes on federal benefits are the consumers themselves. Under the Federal Communications Act, the Commission has regulatory flexibility where consumer protection and public interest will be served.<sup>9</sup> Whether the consumers are required to pay the tax or fee directly themselves, or the charge is taken out of the reimbursement amount by the carrier, or the carrier pays the tax or fee and adjusts its business model to make up for the loss, consumers bear the ultimate loss in any case. Consumers will end up with more limitations and costs associated with their access to voice telephony. This is in direct contradiction to the central purpose of the Lifeline program, that "consumers in all regions of the nation, including low-income consumers, . . . should have access to telecommunications and information services."<sup>10</sup>

Consumers are in a position of relative powerlessness in many situations, especially low-income consumers. They need to be protected against the states' attempts to strip the value of the Lifeline benefits allocated to them by the federal government. The Commission has an obligation to protect the consumers and the Commission's investment in those consumers by declaring it

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are collected within the State on purchases made with food stamp coupons. (2) State and/or local law shall not permit the imposition of tax on food paid for with coupons.").

<sup>9</sup> 47 USC 160(a).

<sup>10</sup> See 47 U.S.C. § 254(b)(1),(3); *see also* 47 U.S.C. § 151.

unlawful for states to tax or impose fees on Lifeline benefits provided by no-charge Lifeline carriers.

**Conclusion**

Therefore, NALA urges the Commission to issue a declaratory ruling affirming that state laws and regulations that impose 911 taxes and fees on low-income Lifeline customers who receive no-charge wireless Lifeline service are prohibited as unlawful, anticompetitive, and not in keeping with the Commission's stated policies. The Commission should grant TracFone's petition and make any relief applicable to all Lifeline providers.

Respectfully submitted,

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